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In the

Supreme Court of the United States

OCTOBER TERM, 1964

No. 496

ESTELLE T. GRISWOLD

AND

C. LEE BUXTON,

Appellants,

v.

CONNECTICUT.

Appeal From The Supreme Court Of Errors Of
Connecticut

REPLY BRIEF FOR APPELLANTS

THOMAS I. EMERSON,
127 Wall Street,
New Haven, Connecticut

CATHERINE G. RORABACK,
185 Church Street,
New Haven, Connecticut
Attorneys for Appellants.

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On page 10 of our main brief we quoted from a letter of the Connecticut Commissioner of Food and Drugs to the Bridgeport Pharmaceutical Association, dated September 15, 1954, in support of our contention that certain contraceptive

devices may be prescribed by physicians for therapeutic purposes and sold by Connecticut pharmacists. On page 27 of the Brief for Appellee counsel quote from a later letter, dated June 30, 1960, as basis for their position that the present Commissioner does not share the views of his predecessor.

At the time of preparing our main brief we were not aware of the letter cited by counsel for appellee. We therefore set forth the correspondence in full.

June 10, 1960

Connecticut Commissioner for Food and Drugs
State Capitol
Hartford, Connecticut

Dear Sir:

It is my understanding that your office sent a letter to the Secretary of the Bridgeport Pharmaceutical Association on or about September 15, 1954 concerning the sale of contraceptive devices in Connecticut. If my information is correct, you stated among other things, "Since diaphragms have such therapeutic and other uses, there is no reason why vaginal diaphragms may not be prescribed or ordered by a physician and such order filled by a pharmacist."

I would greatly appreciate it if you would supply me with a copy of the entire letter referred to above.

Sincerely yours,

/s/ Fowler V. Harper

June 30, 1960

Fowler V. Harper
Yale University Law School
New Haven, Connecticut

Dear Mr. Harper:

I have enclosed herein a copy of the letter you make mention of, in your letter of the 10th. Please be advised that this office is not responsible for or agreed with what might have been the opinion of the Commissioner of Food and Drugs of that date.

Sincerely,

/s/ Attilio R. Frassinelli

Commissioner

Department of Consumer Protection

September 15, 1954

Bridgeport Pharmaceutical Association, Inc.
1244 Stratford Avenue
Bridgeport, Connecticut
Attention: Mr. Simon Frank
Secretary

Dear Sir:

Replying to your letter of September 13, 1954, asking for information concerning the status of vaginal diaphragms under the laws of the State of Connecticut, we would say that information has been submitted to this office showing that vaginal

diaphragms have various uses among which are artificial insemination, for cystoceles and rectoceles and for relaxed vaginal walls and torn muscles in aged females.

Since diaphragms have such therapeutic and other uses there is no reason why vaginal diaphragms may not be prescribed or ordered by a physician and such order filled by a pharmacist. We have always taken the stand that a pharmacist is entirely within his rights to fill any prescription or order from a physician. Such order may be given orally or writing.

Further, both the Federal Food and Drug Administration and the Connecticut Food and Drug Commission agree that diaphragms are devices and not drugs and both agencies accordingly do not require that physicians' oral orders authorizing their sale be reduced to writing or, if such orders are given in writing, be retained on file.

We trust that the above will satisfactorily answer your questions.

Very truly yours,

/s/ Theodore J. Richard,

Commissioner Food and Drugs

July 5, 1960

Mr. Attilio R. Frassinelli
Food and Drug Commission
State Office Building
Hartford, Connecticut

Dear Mr. Frassinelli:

Thank you for your letter of June 30 with the enclosed copy of Commissioner Richard's letter to the Bridgeport Pharmaceutical Association.

In your letter you say, "Please be advised that this office is not responsible for or agreed with what might have been the opinion of the Commissioner of Food and Drugs of that date."

I assume that this means merely that you are not prepared to commit yourself either way as to the validity of the statement made by Commissioner Richard. I would appreciate it if you would advise me whether this interpretation of your letter is accurate.

Sincerely yours,

/s/ Fowler V. Harper

So far as we are aware, no reply was received to Professor Harper's letter of July 5, 1960.

In view of the ambiguity resulting from the above correspondence we do not further rely upon the Commissioner's letter of September 15, 1954. We do, however, adhere to our position that Sections 52-32 and 54-196 of the Connecticut General Statutes do not prohibit the sale or use of contraceptive devices in Connecticut for the prevention of disease, as distinct from the prevention of conception.

THOMAS I. EMERSON,

127 Wall St.,

New Haven, Conn.

CATHERINE G. RORABACK,

185 Church St.,

New Haven, Conn.

Attorneys for Appellants.